REMARKS

This reply is in response to the Final Office Action dated November 9, 2006. Claims 1-94 are pending in the application. Claims 1-19 and 42-44 stand rejected. Claims 20-41, 45 and 46 have been withdrawn from consideration. No claim amendments, cancellations or new claims are presented; therefore, a listing of the claims is not required under 37 CFR 1.121. The listing of claims included with Applicant's previous Response under 37 CFR 1.111 to the Office Action dated June 15, 2006, is incorporated herein by reference.

Applicant notes that claims 47-94 were presented in Applicant's previous Response under 37 CFR 1.111 to the Office Action dated June 15, 2006. Claims 47-94 further limit the substitution of the catecholate ligand. Claims 47-94 have not been addressed or acknowledged by the Examiner. Therefore, Applicant respectfully requests a new office action on the merits and reconsideration of all claims 1-94.

Claims 1-19 and 42-44 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-82 of Zhao et al. (U.S. Publication No. 2004/0044150A1; hereafter "Zhao").

Applicant respectfully submits that the provisional double patenting rejection should be held in abeyance until at least one pending claim is deemed allowable but for a double patenting rejection. At that time, Applicant will, if necessary, submit the appropriate terminal disclaimer(s) to obviate any then-pending double patenting rejection. Applicants respectfully submit that these rejections are not ripe for resolution until there are otherwise allowable claims in the instant case and allowed or issued claims in the cases to which terminal disclaimers are sought. According to the M.P.E.P., the Examiner must withdraw a provisional double patenting rejection in the earlier filed of two pending applications and allow that earlier filed application to issue as a patent without a terminal disclaimer. See M.P.E.P 804(I)(B)(1). Therefore, abeyance of the rejection is respectfully requested.

Furthermore, Applicant respectfully traverses the rejection on grounds that the instant claims are patentably distinct from claims 1-82 of Zhao. For example, the M in Zhao is limited to Ni or Pd, where in the instant claims, M is not so limited. Further, the phenyl rings in Zhao must have hydrogen at the two ortho positions where such is not required in the instant claims. For at least these reasons, withdrawal of the rejection and allowance of the claims is respectfully requested.

Claims 1-19 and 42-44 stand rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Llatas et al. (U.S. Patent No. 6,410,768; herafter "Llatas"). The Examiner states that Applicant's Declaration under 37 CFR 1.131 failed to overcome Llatas as prior art "because the same rejections are also available under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Llatas et al."

Applicant respectfully traverses the rejection on grounds that the Examiner switched the reasons for rejection without allowing the Applicant the appropriate time to reply. As such, the Final designation of this Office Action dated November 9, 2006, was improper. 35 U.S.C. § 102(e) is not the same thing as 35 U.S.C. § 102(a). In the Examiner's previous Office Action dated June 15, 2006, the claims 1-19 and 42-44 were rejected under 35 U.S.C. § 102(a). Applicant properly submitted a Declaration under 37 CFR 1.131 swearing behind Llatas as a §102(a) reference. The Examiner's new grounds of rejection under 35 U.S.C. § 102(e) was not necessitated by amendment of the claims; therefore, the Final designation of the next Office Action was improper. For at least this reason, the Final designation should be withdrawn.

Notwithstanding, Applicant respectfully traverses the rejection on grounds that Llatas is not prior art under 35 U.S.C. § 102(e) to the claimed invention as established by the attached affidavit and supporting evidence of prior invention in accordance with 37 CFR § 1.131. Withdrawal of the rejection and allowance of the claims is respectfully requested.

Moreover, rejoinder of withdrawn claims 20-41, 45 and 46 is respectfully requested. Llatas is not prior art and there is no prior art of record that teaches the common features of the claims. Accordingly, the restricted groups have unity of invention and restriction is not proper. Withdrawal of the restriction and consideration of claims 20-41, 45 and 46 is respectfully requested.

Having addressed all issues set out in the office action, Applicant respectfully submits that the pending claims are now in condition for allowance. Applicant invites the Examiner to telephone the undersigned attorney if there are any issues outstanding which have not been addressed to the Examiner's satisfaction.

The Commissioner is hereby authorized to charge Deposit Account No. 05-1712, for any fees, including extension of time fees and excess claim fees, required to make this response timely and acceptable to the Office.

Respectfully submitted,

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Date

Catherine L. Bell
Attorney for Applicant
Registration No. 35,444

ExxonMobil Chemical Company
Law Technology
P.O. Box 2149
Baytown, Texas 77522-2149
Phone: 281-834-5982
Fax: 281-834-2495